IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17986 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAFATBHAI BHIKHABHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17986 of 2003

MS JAYSHREE C BHATT for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 21/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four prohibition offences were registered against him before Eastern Division Prohibition Police Station at C.R.No.404/02, 361, 1204 and 1277 of 2003 on different dates as shown at Annexure 'B' page no.14 of the petition, for an offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that four offences were registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside. Once the said statements are ignored, then it is clear that the last offence registered against the petitioner was on 11.9.2003 and the order of detention was 21.11.2003, showing, a delay of two months between the date of last offence and the date of the order of detention. The said delay has not been explained by the respondents properly by filing affidavit.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal,learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers. Learned Advocate for the petitioner has contended that though the offences against the petitioner were registered between

February and September, 2003, the order of detention was passed as late as on 21.11.2003 and therefore, there was delay in passing the order of detention after the last registered offence. Ld. AGP has argues that after the registration of the aforesaid offence, the sponsoring authority had recorded statements of the witnesses on 5.11.2003 and they were verified by the detaining authority on 20.11.2003 and looking to the said aspect of the case, the order of detention cannot be said to have been delayed.

6. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was a "bootlegger" and his activities amounted to a threat to public order. The learned advocate for the petitioner has contended that few offences under the Bombay Prohibition Act, 1949, were registered against the petitioner. Now such stray offences registered against the petitioner could not lead to an inference that the petitioner was a "bootlegger" and that his alleged bootlegging activities raised a threat to public order.

7. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

8. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those

witnesses.

9. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were not considered and their names were not disclosed to the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside.

10. For the foregoing reasons, this petition is allowed. The impugned order dated 21.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp